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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,838	08/22/2003	Uwe Kriltz	3691-582	8129

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EXAMINER

BLACKWELL RUDASI, GWENDOLYN A

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,838

Applicant(s)

KRILTZ ET AL.

Examiner

Gwendolyn Blackwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-27 is/are allowed.
- 6) ☒ Claim(s) 28-30 is/are rejected.
- 7) ☒ Claim(s) 31-32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on December 20, 2005 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of any patent granted on serial number 10/797,561 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Application Publication no. 2002/0102352, Hartig et al.

Applicant's claim 28

Applicant's claim 28 requires a coated article comprised of a multilayer coating wherein the coating is comprised of a dielectric layer, first and second layers comprising silver spaced apart from one another by at least one metal oxide inclusive layer and another dielectric layer provided over both of the first and second layers comprising silver. In addition, to the exemplified layer structure the coated article should have particular physical properties.

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Regarding claim 28

Hartig et al disclose the following layer structure, (page 4, Table 1):

TABLE I				
LAYER	SAMPLE A	SAMPLE B	SAMPLE C	SAMPLE D
Zn+	65 Å	66 Å	65 Å	84 Å
ZnO	57 Å	56.7 Å	45 Å	43 Å
Ag	63.7 Å	66.3 Å	74 Å	73 Å
Nb	15.3 Å	15 Å	16.2 Å	17 Å
Zn+	74 Å	73 Å	107 Å	93 Å
Si ₃ N ₄	135 Å	135 Å	118 Å	118 Å
Zn+	197 Å	206 Å	191 Å	189 Å
Si ₃ N ₄	139 Å	133 Å	124 Å	122 Å
Zn+	29 Å	31 Å	57 Å	64 Å
ZnO	61 Å	62 Å	62 Å	51 Å

TABLE I-continued				
LAYER	SAMPLE A	SAMPLE B	SAMPLE C	SAMPLE D
Ag	143 Å	140.4 Å	168 Å	141 Å
Nb	15.9 Å	15 Å	16.8 Å	15 Å
Zn+	83 Å	84 Å	105 Å	108 Å
Si ₃ N ₄	46 Å	24 Å	38 Å	34 Å
TiN	13.3 Å	14.1 Å	15 Å	14 Å
Si ₃ N ₄	152 Å	176 Å	155 Å	156 Å

wherein before tempering the total visible transmission was 71.4% and post tempering the total visible transmission is 78.7%, (page 5, Table 2), which demonstrates that the coated article retained more than 98% of its pre heat treatment visible transmission, meeting the requirements of claim 28.

Regarding claims 29-30

The sheet resistance is 2.5, and the T_v/R_s ($78.7/2.5$) is 31.4, (page 5, Table 2). When the structure recited in the reference is substantially identical to that of the claims, the claimed properties or function are presumed inherent. *MPEP 2112.01*. Because the prior art exemplifies Applicant's claimed layer structure, the claimed physical properties relating to a ΔE^* value are

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inherently present in the prior art. Absent an evidentiary showing to the contrary, the addition of the claimed physical properties to the claim language fails to provide patentable distinction over the prior art of record, meeting the requirements of claims 29-30.

Allowable Subject Matter

4. Claims 1-27 are allowed over the prior art of record. Claims 31 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The closest prior art of record while generally teaching a low emissivity multilayered structure, do not teach or suggest the layer structure as set forth in independent claims 1 and 23, as well as claims 31-32.

Response to Arguments

5. Applicant's arguments filed November 22, 2005 have been fully considered but they are not persuasive with regards to US 2002/0102352, Hartig et al.

6. With regards to Applicant's contention that Hartig et al does not teach or suggest the physical properties as exemplified by Applicant:

This is not persuasive as Hartig et al does teach the layer structure as claimed by Applicant. While Hartig et al may not specifically disclose the physical properties, absent an objective showing to the contrary, those physical properties as claimed by Applicant are presumed present in the prior art. Applicant has not demonstrated by an objective showing that

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the physical properties are not present. Arguments are not considered evidence. As such, the rejection of claims 28-30 stand.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Blackwell whose telephone number is (571) 272-1533. The examiner can normally be reached on Monday - Thursday; 6:30 am - 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gwendolyn Blackwell
Examiner
Art Unit 1775


8/8/06


JENNIFER MCNEIL
PRIMARY EXAMINER

2/21/06